UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,133	03/25/2004	Joseph E. Firebaugh	4541-017	7696

24112   7590   10/11/2007

COATS & BENNETT, PLLC
1400 Crescent Green, Suite 300
Cary, NC 27518

EXAMINER
PANNALA, SATHYANARAYAN R

ART UNIT	PAPER NUMBER
2164	

MAIL DATE	DELIVERY MODE
10/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 August 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

8/9/2007 has been entered.

Response to Amendment

2.   Applicant's Amendment filed on 8/9/2007 has been entered including

amended10-14. In this Office Action, claims 1-16 are pending.

Drawings

3.   The drawings are objected to under 37 CFR 1.83(a). The drawings must show

every feature of the invention specified in the claims. Therefore, the claims 1-9 and

15-16 must be shown or the feature(s) canceled from the claim(s). No new matter

should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   Claim 10-11, 14 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

- Claims 10, line 8, stated as "outputting a markup language data structure."

  Applicant is claiming wrong element, because outputting data is possible and not

  the data structure. For similar reason, claim 14 is also rejected.

- Claim 11, line 1-2, stated as "a flag attribute indicating whether or not to output

  said large data set." The specification or the drawings indicate any flag whether

  to output large data set.

- Claim 12-13, line 4, stated as "CONTAINER", applicant is claiming a data type

  definition statement.

Claim Rejections - 35 USC § 101

6.   35 U.S.C. § 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
>
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
>
> conditions and requirements of this title.

7.   Claims 1-16 are rejected under 35 U.S.C. § 101, because claims are directed to

program per se. Independent claims 1, 10, 15 are claiming a computer program per se

and nonfunctional descriptive material consisting of data structures and computer

programs, which impart functionality when employed as a computer component. As

such, the claims are not limited to statutory subject matter and are therefore non-

statutory. In Sarkar, 588 F.2d at 1335, 200 USPQ at 139. See recent court case, In-Re

Comiskey, _____,Fed. Cir., 2007____, decided 9/20/2007. (see MPEP 2106(IV)

(B)(2)(b) (ii)).

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
>
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
>
> the prior art are such that the subject matter as a whole would have been obvious at the time the
>
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
>
> Patentability shall not be negatived by the manner in which the invention was made.
>
> This application currently names joint inventors. In considering patentability of the claims under 35
>
> U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly
>
> owned at the time any inventions covered therein were made absent any evidence to the contrary.
>
> Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates
>
> of each claim that was not commonly owned at the time a later invention was made in order for the
>
> examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior
>
> art under 35 U.S.C. 103(a).

9.   Claims 1-8, 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Ramaswamy et al. (US Patent 6,643,629) hereinafter Ramaswamy, and in view of

De Boor et al. (US Patent 6,470,381) hereinafter De Boor.

10.   As per independent claims 1, 15, Ramaswamy teaches as a method for

identifying a predetermined number of outliners of interest in a large data set (col. 1,

lines 39-40). Ramaswamy teaches the claimed, a method of synopsizing large data

sets to facilitate the use of an accessibility system (col. 1, lines 39-45). Ramaswamy

teaches the claimed, providing a large data set (col. 2, lines 12-16). Ramaswamy

teaches the claimed, generating a synopsis of a large data (Fig. 6, col. 2, lines 14-15

and col. 9, line 66 to col. 10, line 3). Ramaswamy does not explicitly teach formatting

large data set in a markup language.   However, De Boor teaches the claimed,

formatting large data set in a markup language data structure (Fig. 1, 7, col. 17, lines

14-15). Further, De teaches the claimed, formatting said synopsis of said large data set

in a synopsis container that includes said large data set and said synopsis of said large

data set (Fig. 1, col. 17, lines 14-15). De Boor teaches the claimed, transmitting

synopsis container to a computer having an accessibility system (col. 30, lines 18-21).

Thus, it would have been obvious to one of ordinary skill in the data processing art at

the time of the invention, to have combine the teachings of the cited references because

De Boor's teachings would have allowed Ramaswamy's method to provide Internet

access via the HyperText Transport Protocol (HTTP), in response to user selection of

data items associated with content located on the Internet (col. 4, lines 16-18).

11.   As per dependent claim 2, Ramaswamy teaches the claimed, providing a large

data set comprises automatically generating said large data set in response to a user

input (Fig. 1, col. 2, lines 12-16).

12.   As per dependent claim 3, Ramaswamy teaches the claimed, providing a large

data set comprises retrieving said large data set from storage in response to a user

input (Fig. 3, col. 4, lines 44-49).

13.   As per dependent claim 4, De Boor teaches the claimed, formatting said large

data set for transmission comprises generating markup language data structures to

direct the display of said large data set at a client terminal (col. 6, lines 45-48). Thus, it

would have been obvious to one of ordinary skill in the data processing art at the time of

the invention, to have combine the teachings of the cited references because De Boor's

teachings would have allowed Ramaswamy's method to provide Internet access via the

HyperText Transport Protocol (HTTP), in response to user selection of data items

associated with content located on the Internet (col. 4, lines 16-18).

14.   As per dependent claim 5, Ramaswamy teaches the claimed, generating a

synopsis of said large data set comprises automatically generating said synopsis by

comparing data elements in said large data set to predetermined metrics (Fig. 3, col. 4,

lines 43-54).

15.   As per dependent claim 6, Ramaswamy teaches the claimed, generating a

synopsis of said large data set comprises writing said synopsis by an individual (Fig. 1,

col. 2, lines 37-42).

16.   As per dependent claim 7, De Boor teaches the claimed, formatting said

synopsis of said large data set in a synopsis container comprises generating a markup

language data structure defining said synopsis container (Fig. 7, col. 22, lines 34-52).

17.   As per dependent claim 8, De Boor teaches the claimed, transmitting said

synopsis container comprises transmitting a markup language data structure including

said large data set and said synopsis (col. 30, lines 18-21).

18.   As per independent claim 10, Ramaswamy teaches as a method for identifying a

predetermined number of outliners of interest in a large data set (col. 1, lines 39-40).

Ramaswamy teaches the claimed, a computer readable medium including one or more

computer programs operative to cause a computer to perform the steps (col. 1,

lines 39-45). Ramaswamy teaches the claimed, generating a markup language data

structure initial flag (). Ramaswamy teaches the claimed, generating at least one

attribute comprising a synopsis of said large data (col. 2, lines 12-16). Ramaswamy

does not explicitly teach formatting large data set in a markup language. However De

teaches the claimed, formatting large data set in a markup language data structure

(Fig. 1, 7, col. 17, lines 14-15). De Boor teaches the claimed, generating a data

structure initial tag (HEAD) (Fig. 7). De Boor teaches the claimed, generating a data

structure terminating tag (/HEAD) (Fig. 7). De Boor teaches the claimed, "outputting a

markup language data structure synopsizing the large data set and operative to cause a

computer having an accessibility system to output the synopsis of large data set" (col. 4,

lines 54-61). Thus, it would have been obvious to one of ordinary skill in the data

processing art at the time of the invention, to have combine the teachings of the cited

references because De Boor's teachings would have allowed Ramaswamy's method to

provide Internet access via the HyperText Transport Protocol (HTTP), in response to

user selection of data items associated with content located on the Internet (col. 4,

lines 16-18).

19.   As per dependent claim 11, De Boor teaches the claimed, computer programs

are further operative to cause a computer to perform the steps of generating a flag

attribute indicating whether or not a computer having an accessibility system should

output said large data set (Fig. 7, col. 22, lines 34-52).

20.   As per dependent claim 12, De Boor teaches the claimed, the computer

programs are further operative to cause a computer to perform the steps of associating

markup language data structure with the keyword CONTAINER (Fig. 7, col. 22,

lines 34-52).

21.   The data structure of claim 13, De Boor teaches the claimed, generating the

markup language data structure initial tag comprises generating the tag <CONTAINER>

(HEAD) (Fig. 7) and generating a markup language data structure terminating tag

comprises generating the tag </CONTAINER> (Fig. 7, col. 22, lines 34-52).

22.   As per dependent claim 14, De Boor teaches the claimed, outputting a markup
language data structure data structure synopsizing the large data set comprises
outputting a markup language data structure compatible with the Hyper-Text Markup
Language (Fig. 7, col. 4, lines 54-61, col. 22, lines 34-52).

23.   Claims 9, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Ramaswamy et al. (US Patent 6,643,629) hereinafter Ramaswamy, in view of De Boor
et al. (US Patent 6,470,381) hereinafter De Boor, and in view of Slotznick et al. (USPA
Pub. 2002/0178007 A1) hereinafter Slotznick.

24.   As per dependent claims 9, 16, Ramaswamy and De Boor do not teach using a
screen reader. However, Slotznick teaches the claimed, accessibility system is a
screen reader (Page 2, paragraph [0018]). Thus, it would have been obvious to one of
ordinary skill in the data processing art at the time of the invention, to have combine the
teachings of the cited references because Slotznick's teachings would have allowed
Ramaswamy's method to provide Text-to-speech browsers are also an expense for
those in the lower socio-economic levels, frequently costing end users over $100 (col. 4,
lines 16-18).

Response to Arguments

25.   Applicant's arguments filed on 8/9/2007 have been fully considered but they are

not persuasive and details as follows:

a)   Applicant's argument stated as "how the specification accomplishes this is

not material" see Remarks section, page 6, paragraph four.

In response to Applicant argument, Examiner respectfully disagrees,

because Applicant is referring to the program code whereas the patents are not

given for software and do not read or consider the program code or instructions.

See MPEP 2106.

b)   Applicant's argument stated as "The 101 rejections of claims 10-14 must

be withdrawn."

In response to Applicant argument, Examiner respectfully disagrees,

because the amendment of claims 10-14 did not overcome the rejection of 35

U.S.C. 101 the claims are program pre se. Programs or data structures are

considered as non-statutory subject matter. Therefore, the rejection of claims

10-14 under 35 U.S.C. 101 is retained. Additionally added, other group of claims

1-9 are also rejected under the same reason.

c)   Applicant's argument stated as "Ramaswamy fails to teach or suggest

generating a synopsis of a large data set."

In response to Applicant argument, Examiner respectfully disagrees, because Ramaswamy does teach, generating a synopsis of a large data as "identifying a predetermined number of outliers of interest in a large data set" (Fig. 6, col. 2, lines 14-15 and col. 9, line 66 to col. 10, line 3). Further, in response to applicant's argument, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

d)   Applicant's argument stated as "De Boor does not disclose or suggest any claimed limitation for which it is cited, including any accessibility functionality, such as a screen reader.

In response to Applicant argument, Examiner respectfully disagrees, because De Boor does teach the screen reader as agreed by the applicant. Further, in response to applicant's argument, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sathyanarayan Pannala whose telephone number is (571) 272-4115. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like

assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or

571-272-1000.

Sathyanarayan Pannala
Primary Examiner

srp
October 9, 2007